



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Charles L. Dunn et al.	EXAMINER:	D. Champagne
SERIAL NO.:	09/745,769	ART UNIT:	3622
FILED:	December 22, 2000	CONF. NO.:	7876
FOR:	ONLINE REVENUE SHARING		

CERTIFICATE OF MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on <u>October 8</u> , 2004.	
<u>Julie A. Bowen</u>	
Typed or Printed Name of Person Signing Certificate	
Signature	<u>Julie A. Bowen</u>

Mail Stop Petition
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313

RECEIVED
OCT 18 2004
GROUP 32

PETITION FOR WITHDRAWAL
OF NOTICE OF ABANDONMENT UNDER 37 CFR 1.181

Sir:

Applicants petition under 37 CFR § 1.181(a) to request withdrawal of the holding of abandonment dated September 21, 2004 based on the enclosed evidence that the reply was timely mailed and return of the application to the examiner for further examination. MPEP 711.03(c)(I)(C). This petition does not require a fee because the Applicants assert and the Examiner has agreed that the Notice of Abandonment was issued improperly. MPEP 711.03(c)(I).

The relevant events leading to this petition are as follows:

March 16, 2004: The Examiner issued a first Office Action. *See* Exhibit A.

September 16, 2004: Applicants timely responded to the first office action by mailing a response and a petition for a three-month extension of time with the requisite fee via U.S. mail with a certificate of first class mailing under 37 C.F.R. § 1.8. *See* Exhibit B. The undersigned representative attests based on personal knowledge that the aforementioned mailing was timely. A true copy of the return postcard indicates that the Office properly received the response on September 20, 2004. *See* Exhibit C.

APPLICANTS:
SERIAL NO.:
EXAMINER:
ART UNIT:

Charles L. Dunn et al.
09/745,769
D. Champagne
3622

Page 2 of 2

September 21, 2004: Mail date of Notice of Abandonment. *See* Exhibit D.

September 24, 2004: Applicants received the Notice of Abandonment.

September 27, 2004: The undersigned representative attempted to contact the Examiner regarding this issue and left a message on the Examiner's voicemail.

September 28, 2004: The undersigned representative discussed the Notice of Abandonment with the Examiner by telephone. The Examiner acknowledged that Applicant's response dated September 16, 2004 was received, *see* Exhibit E, and that he issued the Notice of Abandonment prematurely on Saturday, September 18, 2004.

Accordingly, Applicants request that their response to the Official Action dated March 16, 2004 be accorded the date it was properly transmitted and received, namely September 16, 2004, pursuant to the certificate of mailing rule, 37 C.F.R. §1.8(b), and that the notice of abandonment be withdrawn. Applicants further requests that any reduction in patent term be adjusted to reflect the timely filing of the response to the office action.

Please apply any charges or credits to the account of the undersigned, Deposit Account No. 50-1721.

Respectfully submitted,



Robert P. Smith
Reg. No.: 48,680
KIRKPATRICK & LOCKHART, LLP
75 State Street
Boston, Massachusetts 02109
Tel.: (617) 261-3100

DATE: October 8, 2004



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,769	12/22/2000	Charles L. Dunn	12310-002001	7876

22832 7590 03/16/2004

KIRKPATRICK & LOCKHART LLP
75 STATE STREET
BOSTON, MA 02109-1808

EXAMINER

CHAMPAGNE, DONALD

ART UNIT	PAPER NUMBER
----------	--------------

3622

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

DOCKETING

Action Code: Office Action

Base Date: 3/16/04

Due Date: 6/16/04

Deadline: 9/16/04

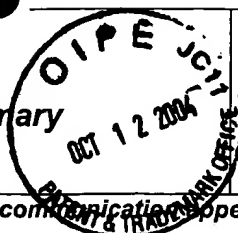
Info: _____

Docketer: TPH Date: 3/19/04

Sec'y: _____ Date: _____

Att'y: _____ Date: _____

Office Action Summary



Application No. 09/745,769		Applicant(s) DUNN ET AL.	
Examiner Donald L. Champagne		Art Unit 3622	MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2001.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-39 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 22 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 1.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____.

Art Unit: 3622



DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. Claims 1-39 are rejected under 35 U.S.C. 103(a) as being obvious over Kanter in view of Egendorf.
3. Kanter teaches a method, system and machine-readable medium which stores a method, the method comprising: determining if a third party *participant* referred a buyer of a service, which reads on a good not requiring physical delivery, to a *sponsoring company* seller of the service, and issuing credit and awards to the participants based on sales made, which reads on apportioning revenue from sale of the service between the seller and the third party (col. 16 line 62 to col. 17 line 2).
4. Kanter does not teach an online buyer and seller. Egendorf teaches an online buyer and seller (col. 1 lines 54-60). Because Kanter teaches a system applicable to any buyer and seller, and Egendorf teaches a new business opportunity for many buyers and sellers, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the teachings of Egendorf to those of Kanter.
5. All the remaining claim limitations are taught by or obvious from the references. Note in particular that Kanter teaches a multilevel marketing system, where each participant can be a seller as well as a buyer, and can be a fourth party, etc.

Conclusion

6. **COPY of REFERENCES** - Applicant is entitled to receive a copy of every reference cited by the examiner (except at allowance; MPEP 707.05(a)). Applicant should contact the examiner if a completed form PTO-892 is enclosed, but the cited references are not.

Art Unit: 3622

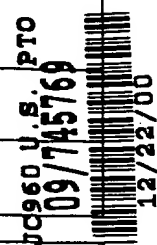
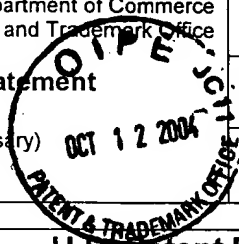
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 703-308-3331. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 703-746-5536.
8. The examiner's supervisor, Eric Stamber, can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.
9. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.



Donald L. Champagne
Examiner
Art Unit 3622

5 March 2004

Substitute Form PTO-1449 (Modified)	U.S. Department of Commerce Patent and Trademark Office	Attorney's Docket No. 12310-002001	Application No. --
Information Disclosure Statement by Applicant (Use several sheets if necessary)		Applicant Charles L. Dunn et al.	
(37 CFR §1.98(b))		Filing Date December 22, 2000	Group Art Unit --



U.S. Patent Documents

Examiner Initial	Desig. ID	Patent Number	Issue Date	Patentee	Class	Subclass	Filing Date If Appropriate
DLV	AA	6,029,141	February 22, 2000	Bezos et al.			
	AB						
	AC						
	AD						
	AE						
	AF						
	AG						
	AH						
	AI						
	AJ						
	AK						

Foreign Patent Documents or Published Foreign Patent Applications

Examiner Initial	Desig. ID	Document Number	Publication Date	Country or Patent Office	Class	Subclass	Translation	
							Yes	No
	AL							
	AM							
	AN							
	AO							
	AP							

Other Documents (include Author, Title, Date, and Place of Publication)

Examiner Initial	Desig. ID	Document
	AQ	
	AR	
	AS	
	AT	

Examiner Signature 	Date Considered 3-1-01
EXAMINER: Initials citation considered. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	



Notice of References Cited

Application/Control No.

09/745,769

Applicant(s)/Patent Under
Reexamination
DUNN ET AL.

Examiner

Donald L. Champagne

Art Unit

3622

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,537,314 A	07-1996	Kanter, Mark W.	705/14
	B	US-5,794,221	08-1998	Egendorf, Andrew	705/40
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	<i>Donald L. Champagne</i> 8-5-04

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a)).
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/745,769	
	Filing Date	December 22, 2000	
	First Named Inventor	Charles L. Dunn	
	Art Unit	3622	
	Examiner Name	Donald L. Champagne	
Total Number of Pages in This Submission	14	Attorney Docket Number	10008/7000

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <p style="text-align: center;">postcard</p>
<div>Remarks</div>		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual name	Robert P. Smith	
Signature	<i>Robert P. Smith</i>	
Date	Sept. 16, 2004	

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name	Robert P. Smith		
Signature	<i>Robert P. Smith</i>	Date	Sept. 16, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 475

Complete if Known

Application Number 09/745,769
 Filing Date December 22, 2000
 First Named Inventor Charles L. Dunn
 Examiner Name Donald L. Champagne
 Art Unit 3622
 Attorney Docket No. 10008/7000

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money ☐ Other ☐ None
Order☒ Deposit Account:Deposit
Account
Number 50-1721Deposit
Account
Name Kirkpatrick & Lockhart LLP

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments
☒ Charge any additional fee(s) during the pendency of this application
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1)

(\$ 0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
-20 **	0	X	0
-3 **	0	X	0
Multiple Dependent		X	0

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

(\$ 0

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	475
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17 (q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$ 475

SUBMITTED BY

Complete (if applicable)

Name (Print/Type) Robert P. Smith

Registration No.
(Attorney/Agent)

48,680

Telephone

617-261-3100

Signature

Robert P. Smith

Date

Sept. 16, 2004

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing this form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO/SB/22 (08-04)
Approved for use through 7/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)		Docket Number (Optional) 10008/7000
Application Number 09/745,769		Filed December 22, 2000
For ONLINE REVENUE SHARING		
Art Unit 3622	Examiner Donald L. Champagne	

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

	Fee	Small Entity Fee	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$110	\$55	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$420	\$210	\$ _____
<input checked="" type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$950	\$475	<u>\$475</u>
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1480	\$740	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2010	\$1005	\$ _____

- ☒ Applicant claims small entity status. See 37 CFR 1.27.
- ☒ A check in the amount of the fee is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-1721. I have enclosed a duplicate copy of this sheet.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

- I am the ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71
- Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).
- ☒ attorney or agent of record. Registration Number 48,680
- ☐ attorney or agent under 37 CFR 1.34(a).

Registration number if acting under 37 CFR 1.34(a). _____

Robert P. Smith
Signature

Robert P. Smith

Typed or printed name

Sept 16, 2004
Date

617-261-3100

Telephone Number

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

- ☒ Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/745,769
Applicant: Charles L. Dunn et al.
Filed: December 22, 2000
Title: ONLINE REVENUE SHARING
TC/AU: 3622
Conf. No. 7876
Examiner: Donald L. Champagne
Docket No.: I0008/7000

CERTIFICATE OF MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on <u>Sept 16</u> , 2004.	
<u>Robert P. Smith</u>	
Typed or Printed Name of Person Signing Certificate	
Signature	<u>Robert P. Smith</u>

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE

Sir:

In response to the Office action mailed March 16, 2004, please amend the above-identified application as follows:

The listing of **claims** begins on page 2 of this paper.

Remarks begin on page 9 of this paper.

Amendment to the Claims

1. (original) A method comprising:

determining if a third party referred an online buyer of a good not requiring physical delivery to an online seller of the good not requiring physical delivery; and

apportioning revenue from sale of the good not requiring physical delivery between the online seller and, if a third party referred the online buyer to the online seller, to the third party.
2. (original) The method of claim 1 in which the determining is performed automatically.
3. (original) The method of claim 1 in which the apportioning is performed automatically.
4. (original) The method of claim 1 further comprising registering the third party with the online seller as eligible to receive a portion of revenues from goods not requiring physical delivery sold by the online seller to an online buyer who navigated across a network to the online seller via the third party.
5. (original) The method of claim 1 further comprising determining if a fourth party referred the third party to the online seller and if so, apportioning revenue from the sale of the good not requiring physical delivery between the online seller and, if the third party referred the online buyer to the online seller, to the third party and to the fourth party.

6. (original) The method of claim 1 further comprising delivering the good not requiring physical delivery to the online buyer after confirming payment for the good not requiring physical delivery.

7. (original) The method of claim 1 in which the revenue is apportioned between the third party and the online seller in accordance with predetermined percentages.

8. (original) The method of claim 7 in which the revenue is also apportioned in accordance with predetermined percentages to a fourth party responsible for performing the determining and the apportioning.

9. (original) The method of claim 1 in which the online buyer purchases the good not requiring physical delivery over the Internet.

10. (original) The method of claim 1 in which the good not requiring physical delivery includes a subscription to a web site.

11. (original) The method of claim 1 in which the good not requiring physical delivery includes a donation.

12. (original) The method of claim 1 in which the good not requiring physical delivery includes an electronic file deliverable over a network that the online buyer used in purchasing the good not requiring physical delivery from the online seller.

13. (original) The method of claim 1 further comprising providing data online regarding the sale of the good not requiring physical delivery.

14. (original) The method of claim 13 in which access to the online data is secure.

15. (original) The method of claim 13 in which the data includes how the revenue is apportioned between the third party and the online seller in accordance with predetermined percentages.

16. (original) The method of claim 1 further comprising providing the online seller with resources on a network on which to sell the good nor requiring physical delivery.

17. (original) The method of claim 1 further comprising determining which of a plurality of third parties associated with the online seller is the third party that referred the online buyer to the online seller.

18. (original) An article comprising a machine-readable medium which stores machine-executable instructions, the instructions causing a machine to;

determine if a third party referred an online buyer of a good not requiring physical delivery to an online seller of the good not requiring physical delivery; and

apportion revenue from sale of the good not requiring physical delivery between the online seller and, if a third party referred the online buyer to the online seller, to the third party.

19. (original) The article of claim 18 in which the determining is performed automatically.

20. (original) The article of claim 18 in which the apportioning is performed automatically.

21. (original) The article of claim 18 further causing a machine to register the third party with the online seller as eligible to receive a portion of revenues from goods not requiring

physical delivery sold by the online seller to an online buyer who navigated across a network to the online seller via the third party.

22. (original) The article of claim 18 further causing a machine to determine if a fourth party referred the third party to the online seller and if so, apportioning revenue from the sale of the good not requiring physical delivery between the online seller, and, if the third party referred the online buyer to the online seller, to the third party and to the fourth party.

23. (original) The article of claim 18 further causing a machine to deliver the good not requiring physical delivery to the online buyer after confirming payment for the good not requiring physical delivery.

24. (original) The article of claim 18 in which the revenue is apportioned between the third party and the online seller in accordance with predetermined percentages.

25. (original) The article of claim 24 in which the revenue is also apportioned in accordance with predetermined percentages to a fourth party responsible for performing the determining and the apportioning.

26. (original) The article of claim 18 in which the online buyer purchases the good not requiring physical delivery over the Internet.

27. (original) The article of claim 18 in which the good not requiring physical delivery includes a subscription to a web site.

28. (original) The article of claim 18 in which the good not requiring physical delivery includes a donation.

29. (original) The article of claim 18 in which the good not requiring physical delivery includes an electronic file deliverable over a network that the online buyer used in purchasing the good not requiring physical delivery from the online seller.

30. (original) The article of claim 18 further causing a machine to provide data online regarding the sale of the good not requiring physical delivery.

31. (original) The article of claim 30 in which access to the online data is secure.

32. (original) The article of claim 30 in which the data includes how the revenue is apportioned between the third party and the online seller in accordance with predetermined percentages.

33. (original) The article of claim 18 further causing a machine to providing the online seller with resources on a network on which to sell the good not requiring physical delivery.

34. (original) The article of claim 18 further causing a machine to determine which of a plurality of third parties associated with the online seller is the third party that referred the online buyer to the online seller.

35. (original) A system comprising:

a first mechanism configured to connect to a public network and to enable a buyer to purchase a good not requiring physical delivery over the public network from a seller; and

a second mechanism configured to connect to the public network, to confirm payment for the good not requiring physical delivery before the good not requiring physical delivery is

delivered to the buyer, and to apportion the payment between the seller and a third party that referred the buyer to the seller via the public network.

36. (original) The system of claim 35 in which the second mechanism automatically confirms the payment.

37. (original) The system of claim 35 in which the second mechanism automatically apportions the payment.

38. (original) A method comprising:

- registering an online seller of a good with an entity;
- registering a third party with the entity as eligible to receive a portion of revenues from sales of the good sold by the online seller to an online buyer who navigated across a network to the online seller via the third party;
- automatically determining if the third party referred the online buyer of the good to the online seller of the good;
- automatically apportioning revenue from sale of the good between the online seller and, if a third party referred the online buyer to the online seller, to the third party according to a predetermined payment structure;
- automatically determining if a fourth party referred the third party to the online seller and if so, automatically apportioning revenue from the sale of the good between the online seller and, if the third party referred the online buyer to the online seller, to the third party and to the fourth party according to a predetermined payment structure; and

Appl. No.: 09/745,769

Amdt dated: September 16, 2004

Reply to Office Action of: March 16, 2004

Page 8

automatically providing data online regarding the sale of the good to the online seller, to the third party if the third party referred the online buyer to the online seller, and the fourth party if the fourth party referred the third party to the online seller.

39. (original) The method of claim 38 in which the good includes a good not requiring physical delivery.

Remarks

Independent claims 1, 18, 35, and 38 have been rejected as unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,537,314 to Kanter ("Kanter") and U.S. Patent No. 5,794,221 to Egendorf ("Egendorf"). Applicant respectfully traverses this rejection.

Independent claims 1, 18, 35, and 38 recite, *inter alia*, determining if a third party referred an online buyer to an online seller (hereafter, "online referral feature"). Independent claims 1, 18, 35, and 38 are patentable over Kanter and Egendorf because neither of these references, either alone or in combination, shows or suggests a system or method for determining, in an online context, if a third party referred a buyer to a seller. Applicants acknowledge the Examiner's statement on page 2 of the Official Action that Kanter does not teach an online buyer and seller. Egendorf does not teach any system or method for determining if a third party referred a buyer to a seller, whether online or not. Therefore, even if Kanter and Egendorf were combined as suggested by the Examiner (assuming these references could be combined as suggested by the Examiner, which Applicants do not admit), the online referral feature of claims 1, 18, 35, and 38 is missing and thus is not suggested or taught by these references.

Additionally, even if Kanter and Egendorf could be combined (which Applicants do not admit), the Examiner has not established a *prima facie* case of obviousness because the Official Action fails to identify any teaching, suggestion, or motivation in the prior art, either implicitly or explicitly, that would cause one to make the proposed modification. The Examiner's reliance on

level of skill in the art to provide the suggestion cannot support a *prima facie* case. M.P.E.P. § 2143.01. Indeed, Kanter would have deterred one of ordinary skill from using the Egendorf patent teachings because, on one hand, Kanter aimed to eliminate barriers for consumers to participate in the program while, on the other hand, Egendorf inherently limits participation to a service provider's subscribers. *See e.g.*, Kanter, col., 13, lines 45-48 (The "advantages of my invention are . . . to provide an incentive award program which eliminates the need for applicants to be approved by a lending institution in order to participate in the program."). Because the Examiner has not (and cannot) identify any teaching, suggestion, or motivation in the prior art that would cause one to make the proposed modification, Applicants request that the rejection be withdrawn.

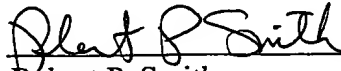
Dependent claims 2-17, 19-34, 36-37 and 39 depend either directly or indirectly from independent claims 1, 18, 35, and 38, and thus contain all of the limitations thereof. Therefore, these dependent claims are patentable over Kanter and Egendorf for the reasons set forth above with respect to claims 1, 18, 35, and 38.

Appl. No.: 09/745,769
Amdt dated: September 16, 2004
Reply to Office Action of: March 16, 2004
Page 11

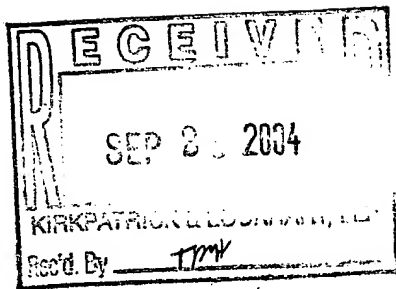
Summary

Applicants submit that all of the claims are now in condition for allowance, which action is requested. If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-1721.

Respectfully submitted,



Robert P. Smith
Reg. No.: 48,680
KIRKPATRICK & LOCKHART LLP
75 State Street Boston, Massachusetts 02109
Tel.: (617) 261-3100



Serial No. 09/745,769 File No. I0008/7000 By: APS/icl

Applicant(s): Charles L. Dunn et al

Title: Online Revenue Sharing

The following were received in the PTO Mail Room on the date stamped hereon:

- | | |
|---|--|
| <input type="checkbox"/> Cert. of Mailing by Express Mail under 37 CFR 1.10 | <input type="checkbox"/> Information Disclosure Statement, Form PTO-1449 and |
| <input type="checkbox"/> Express Mail Label No. _____ | <input type="checkbox"/> cited references _____ |
| <input checked="" type="checkbox"/> Cert. of Mailing under 37 CFR 1.8(a) | <input type="checkbox"/> Priority Document(s) _____ |
| <input type="checkbox"/> Provisional Patent Application Cover Sheet | <input type="checkbox"/> Response to and Copy of _____ |
| <input type="checkbox"/> New Patent Application Transmittal | <input type="checkbox"/> Notice to File Missing Parts _____ Notice to Comply _____ |
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| <input type="checkbox"/> _____ ISR _____ IPER _____ PCT/IB/308 | <input checked="" type="checkbox"/> Request for Corr'd Filing Receipt w/market-up copy of FR |
| <input type="checkbox"/> Patent Application (____ pgs) _____ Design Patent App. | <input type="checkbox"/> Amendment/Reply (____ pgs) |
| <input type="checkbox"/> _____ pgs Spec'n. _____ pgs Abstract, _____ pgs Data Sheet | <input type="checkbox"/> Request for Continued Examination (RCE) |
| <input type="checkbox"/> _____ pgs Claims (claims 1 - _____) _____ app. title sheet | <input type="checkbox"/> Notice of Appeal |
| <input type="checkbox"/> Non-Publication Request Under 35 U.S.C. § 122(b)(2)(B)(i) | <input type="checkbox"/> Brief (____ pgs) (x3) |
| <input type="checkbox"/> Drawings: _____ Sheet(s) (FIGS. _____) | <input type="checkbox"/> Issue Fee Transmittal (PTOL-83) |
| <input type="checkbox"/> _____ Formal or _____ Informal | <input checked="" type="checkbox"/> Petition for Extension of Time (x2) |
| <input type="checkbox"/> Trans'l of Formal Drwgs/Ltr to Official Draftsman (____ pgs) | <input checked="" type="checkbox"/> Fee Transmittal (x2) |
| <input type="checkbox"/> Declaration and Power of Attorney (____ substitute) (____ pgs) | <input checked="" type="checkbox"/> Check for \$ <u>475</u> |
| <input type="checkbox"/> Associate/Additional/Revocation of Power of Attorney | <input type="checkbox"/> Check No(s) _____ |
| <input type="checkbox"/> Assignment (____ pgs) and Form PTO-1595 (____ pgs) | <input checked="" type="checkbox"/> Transmittal Letter (x2) |
| <input type="checkbox"/> Other _____ | |

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,769	12/22/2000	Charles L. Dunn	12310-002001	7876
22832	7590	09/21/2004	EXAMINER	
KIRKPATRICK & LOCKHART LLP			CHAMPAGNE, DONALD	
75 STATE STREET			ART UNIT	PAPER NUMBER
BOSTON, MA 02109-1808			3622	

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/745,769

Examiner

Donald L. Champagne

Applicant(s)

DUNN ET AL.

Art Unit

3622

NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 16 March 2004.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

A voice mail inquiry as to the status of this case was left for atty. Jeffrey L. Snow at 617-261-3100 on 16 September 2004, but no response was received.

DONALD L. CHAMPAGNE
PRIMARY EXAMINER

DONALD L. CHAMPAGNE
PRIMARY EXAMINER

Donald L. Champagne
Primary Examiner
Art Unit: 3622

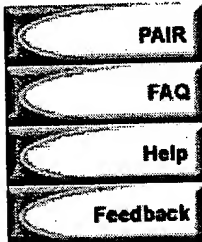
Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



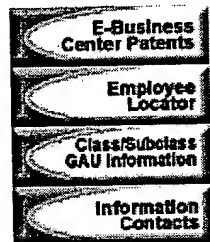
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Search results as of: 9-27-2004::15:26:13 E.T.

Search results for application number:09/745,769			
Application Number:	09/745,769	Customer Number:	22832
Filing or 371(c) Date:	12-22-2000	Status:	Abandoned – Failure to Respond to an Office Action
Application Type:	Utility	Status Date:	09-20-2004
Examiner Name:	CHAMPAGNE, DONALD	Location:	FILE REPOSITORY (FRANCONIA)
Group Art Unit:	3622	Location Date:	09-27-2004
Confirmation Number:	7876	Earliest Publication No:	US 2002-0082911 A1
Attorney Docket Number:	12310-002001	Earliest Publication Date:	06-27-2002
Class/ Sub-Class:	705/014	Patent Number:	-
First Named Inventor:	Charles Dunn, Lauderhill, FL	Issue Date of Patent:	-
Title Of Invention:	Online revenue sharing		

Select Search Option

File History	
Date	Contents Description
09-20-2004	Workflow incoming amendment IFW
09-21-2004	Mail Abandonment for Failure to Respond to Office Action
09-20-2004	Abandonment for Failure to Respond to Office Action
03-16-2004	Mail Non-Final Rejection
03-08-2004	Non-Final Rejection
04-23-2002	Case Docketed to Examiner in GAU
07-14-2001	Correspondence Address Change
06-06-2001	Case Docketed to Examiner in GAU
03-22-2001	Application Dispatched from OIPE
02-08-2001	Application Is Now Complete
03-19-2001	Correspondence Address Change
02-08-2001	Notice Mailed–Application Incomplete–Filing Date Assigned
02-08-2001	Correspondence Address Change
01-17-2001	IFW Scan & PACR Auto Security Review
12-22-2000	Initial Exam Team nn



PTO/SB/21 (04-04)

Approved for use through 07/31/2006. OMB 0651-0031

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362
161**TRANSMITTAL
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/745,769	
	Filing Date	December 22, 2000	
	First Named Inventor	Charles L. Dunn	
	Art Unit	3622	
	Examiner Name	Donald L. Champagne	
Total Number of Pages in This Submission	28	Attorney Docket Number	I0008/7000

ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition with Exhibits A - E <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): postcard
Remarks		

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GROUP 3000**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual name	Robert P. Smith
Signature	<i>Robert P. Smith</i>
Date	October 8, 2004

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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name	Julie A. Bowen		
Signature	<i>Julie A. Bowen</i>	Date	October 8, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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TRANSMITTAL FORM

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Total Number of Pages in This Submission		Application Number	09/745,769
		Filing Date	December 22, 2000
		First Named Inventor	Charles L. Dunn
		Art Unit	3622
		Examiner Name	Donald L. Champagne
28		Attorney Docket Number	I0008/7000

ENCLOSURES (check all that apply)

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Remarks

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Robert P. Smith
Signature	<i>Robert P. Smith</i>
Date	October 8, 2004

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Typed or printed name	Julie A. Bowen
Signature	<i>Julie A. Bowen</i>
Date	October 8, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.